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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,447	11/09/2001	Gregory R. Brotz	112685	5481

7590 09/03/2003

William Nitkin  
850 Boylston Street, Ste 424  
Chestnut Hill, MA 02467-2402

EXAMINER

COLLINS, TIMOTHY D

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 09/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/010,447

Applicant(s)

BROTZ, GREGORY R.

Examiner

Timothy D Collins

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 2-22 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is unclear how one would make or use this device, it appears to rely on circuitry to provide for the control of the superconducting effects. However modern circuits cannot control what parts of a superconductor will breakdown first and what parts of a superconductor will remain superconductive. More information on these subjects is necessary. It is also not clear how the materials in this device are to interact with the geomagnetic field of the earth, because no known superconductive materials are sensitive enough to be levitated by the earth's magnetic field.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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Claims 2-22 are rejected under 35 U.S.C. 101 because the disclosed invention is inoperative and therefore lacks utility. The invention is inoperative because no superconductive materials are known to exist that are sensitive enough to be levitated by the earth's geomagnetic field. Also modern circuits cannot control what parts of superconductors breakdown first and what parts will remain superconductive. Therefore it is uncontrollable as well. Because of the above it is asserted by the examiner that the invention is inoperative and will not function. Therefore the examiner requires a working model if prosecution is to continue.

***Response to Arguments***

4. Applicant's arguments filed 6/26/03 have been fully considered but they are not persuasive.
  - a. Re applicant's argument that the control circuits needed to control the super conducting craft are simple and uses well known and also straightforward, the examiner maintains that the circuitry as described is not detailed enough and it is still unclear how the control systems work. Currently in the super conducting art it is not possible to tell exactly how and where the super conducting properties will break down when current is applied. Therefore the craft must not have a "straightforward" control system with only "basic circuitry" with wires and a switch. More detail in this regard is needed, and required in response to this action. Also, while it is noted that the physical occurrence of the breakdown of superconductivity is well known, however the precise implementation and control of such superconductivity is not known in such a way that it does not need to be

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explained in detail for one to make and use the device. Explanation of the workings of the circuitry with details included is needed, because it is still unclear how the device operates as stated previously.

b. Re applicant's argument that a Mylar balloon may float in the atmosphere with lighter than air gas. The examiner maintains that the super conductive craft of the invention as claimed does not claim lighter than air gas levitating it.

Therefore the levitation is claimed as being from the super conductive properties, which act against the earth's field. This runs counter the field of superconductors as we know them today. Superconductors cannot levitate themselves above the earth and if the device of the present invention does work in this manner a working model is required now. Also the examiner is confused as to how the analogy of the Mylar balloon is similar to the device. Further, it is noted that the applicant states that superconductors levitate, and that is correct, however it is known that they levitate with powerful magnets, and not with the weak field of the earth. Proof of the functioning of the invention as claimed is needed, because as stated earlier it is unclear how exactly a superconductor will levitate in the earth's magnetic field. Explanation and proof are once again called for by the examiner.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy D Collins whose telephone number is 703-306-9160. The examiner can normally be reached on M-Th, 7:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703-308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-4180.

tdc

  
PETER M POON  
SUPERVISOR OF EXAMINERS  
TECHNOLOGY CENTER